

# SENATE, No. 689

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## STATE OF NEW JERSEY 215th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator DAWN MARIE ADDIEGO**

**District 8 (Atlantic, Burlington and Camden)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**SYNOPSIS**

Increases the penalty for certain gang related crimes.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1    **AN ACT** concerning the penalties for certain gang related crimes  
2       and amending P.L.2007, c.341.

3

4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6

7       1. Section 1 of P.L.2007, c.341 (C.2C:33-29) is amended to  
8       read as follows:

9       1. a. A person is guilty of the crime of gang criminality if, while  
10       knowingly involved in criminal street gang activity, he commits,  
11       attempts to commit, or conspires to commit, whether as a principal  
12       or an accomplice, any crime specified in chapters 11 through 18,  
13       20, 33, 35 or 37 of Title 2C of the New Jersey Statutes;  
14       N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of  
15       P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. A  
16       crime is committed while involved in a criminal street gang related  
17       activity if the crime was committed for the benefit of, at the  
18       direction of, or in association with a criminal street gang.

19       "Criminal street gang" means three or more persons associated in  
20       fact. Individuals are associated in fact if: (1) two of the following  
21       seven criteria that indicate criminal street gang membership apply:  
22       (a) self-proclamation; (b) witness testimony or official statement;  
23       (c) written or electronic correspondence; (d) paraphernalia or  
24       photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia  
25       of street gang activity; and (2) individually or in combination with  
26       other members of a criminal street gang, while engaging in gang  
27       related activity, have committed or conspired or attempted to  
28       commit, within the preceding five years from the date of the present  
29       offense, excluding any period of imprisonment, one or more  
30       offenses on separate occasions of robbery, carjacking, aggravated  
31       assault, assault, aggravated sexual assault, sexual assault, arson,  
32       burglary, kidnapping, extortion, tampering with witnesses and  
33       informants or a violation of chapter 11, section 3, 4, 5, 6, or 7 of  
34       chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes.

35       b. Grading. Gang criminality is a crime of one degree higher  
36       than the most serious underlying crime referred to in subsection a.  
37       of this section, except that where the underlying crime is a crime of  
38       the first degree, gang criminality is a first degree crime and the  
39       defendant, upon conviction, and notwithstanding the provisions of  
40       paragraph (1) of subsection a. of N.J.S.2C:43-6, shall be sentenced  
41       to an ordinary term of imprisonment between 15 and 30 years,  
42       during which the defendant shall not be eligible for parole. A  
43       sentence imposed upon conviction of the crime of gang criminality  
44       shall be ordered to be served consecutively to the sentence imposed  
45       upon conviction of any underlying offense referred to in subsection

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

      Matter underlined thus is new matter.

1 a. of this section. Except where the underlying offense is a crime of  
2 the first degree, the term of imprisonment shall include the  
3 imposition of a minimum term which shall be fixed at, or between,  
4 one-third and one-half of the sentence imposed, during which the  
5 defendant shall be ineligible for parole.

6 (cf: P.L.2007, c.341, s.1)

7  
8 2. Section 2 of P.L.2007, c.341 (C.2C:33-30) is amended to  
9 read as follows:

10 2. a. A person promotes organized street crime if he conspires  
11 with others as an organizer, supervisor, financier or manager to  
12 commit any crime specified in chapters 11 through 18, 20, 33, 35,  
13 or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1;  
14 N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26  
15 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9.

16 b. Grading. Promotion of organized street crime is a crime of  
17 one degree higher than the most serious underlying crime referred  
18 to in subsection a. of this section, except that where the underlying  
19 offense is a crime of the first degree, promotion of organized street  
20 crime is a first degree crime and the defendant, upon conviction,  
21 and notwithstanding the provisions of paragraph (1) of subsection a  
22 of N.J.S.2C:43-6, shall be sentenced to an ordinary term of  
23 imprisonment between 15 and 30 years, during which the defendant  
24 shall be ineligible for parole.

25 A sentence imposed upon conviction of the crime of promotion  
26 of organized street crime shall be ordered to be served  
27 consecutively to the sentence imposed upon conviction of any  
28 underlying offense referred to in subsection a. of this section.  
29 Except where the underlying offense is a crime of the first degree,  
30 the term of imprisonment shall include the imposition of a  
31 minimum term which shall be fixed at, or between, one-third and  
32 one-half of the sentence imposed, during which the defendant shall  
33 be ineligible for parole.

34 (cf: P.L.2007, c.341, s.2)

35  
36 3. This act shall take effect immediately.

#### 37 38 39 STATEMENT

40  
41 This bill increases the penalties for the crimes of gang  
42 criminality and promoting organized street crime. Under current  
43 law, a person is guilty of gang criminality if that person commits  
44 certain crimes while knowingly involved in criminal street activity.  
45 A person is guilty of promoting organized street crime if that person  
46 conspires with others as an organizer, supervisor, financier or  
47 manager to commit certain crimes. An example of the underlying

1 crimes listed in both statutes include, robbery, carjacking,  
2 aggravated assault, assault, aggravated sexual assault, sexual  
3 assault, arson, burglary, kidnapping, extortion, tampering with  
4 witnesses and informants.

5 The penalty for either crime is one degree higher than the most  
6 serious underlying offense. Where the underlying offense is a crime  
7 of the first degree, however, gang criminality or promoting  
8 organized street crime is a first degree crime and the defendant is to  
9 be sentenced to a term of 15 to 30 years imprisonment.

10 The provisions of this bill increase the penalties for both crimes  
11 to provide that a person found guilty of gang criminality or  
12 promoting organized street crime, where the underlying offense is a  
13 crime of the first degree, is ineligible for parole. In addition, where  
14 the underlying offense is a crime of the second through fourth  
15 degree, a person is required to serve a minimum term of  
16 imprisonment to be fixed at, or between, one-third and one-half of  
17 the sentence imposed, during which the defendant shall be  
18 ineligible for parole.